

REMARKS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the following remarks.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 14-16 and 18-27 are currently pending.

Initially, the Examiner is thanked for withdrawing the previous 35 U.S.C. §112, second paragraph, rejections.

II. THE REJECTIONS UNDER 35 U.S.C. § 103(a)

Claims 14-16 and 18-27 were rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over U.S. Patent Application Publication No. 2005/0258401 A1 to Lane et al. ("Lane").

The Office Action states that "As for applicant's arguments that a series of tests were performed to show unexpected results it should be noted that providing test results in the response is not a proper showing. That is, a proper showing would be a declaration which clearly shows the unexpected results. Accordingly until such time that a proper showing of unexpected results is presented the rejection is not overcome and therefore maintained by the Examiner." (Office Action -- pages 2 & 3)

In accordance with the Examiner's suggestion, Applicants respectfully submit a declaration from the inventors as Appendix A, following page 7 of this paper (hereinafter merely "Declaration").

As stated in the Declaration, Applicants conducted a series of tests to demonstrate that lithium glycerophosphate has a much greater penetrability into concrete than sodium glycerophosphate respectfully. Declaration ¶ 6.

Applicants observations from the test results indicated that sodium glycerophosphate penetrated to a depth of about 40 mm, whereas lithium glycerophosphate penetrated to a depth of about 60mm, which is about 50% deeper. Declaration ¶ 7.

Applicants therefore concluded that the lithium compound is much more appropriate for penetrating a concrete structure and reaching embedded steel rebars than the sodium compound. This result was unexpected before the conception of the invention by the Applicants. Declaration ¶ 8. It is neither disclosed by nor is in anyway predictable from Lane. Therefore, Applicants respectfully submit that the present invention is patentable over Lane.

Claims 14-16 and 18-27 were rejected under 35U.S.C. 103(a) as allegedly being unpatentable over Lane in view of U.S. Patent No. 4,098,614 to Ray ("Ray").

The Office Action states that "As for applicant's arguments that a series of tests were performed to show unexpected results it should be noted that providing test results in the response is not a proper showing. That is, a proper showing would be a declaration which clearly shows the unexpected results. Accordingly until such time that a proper showing of unexpected results is presented the rejection is not overcome and therefore maintained by the Examiner." (Office Action -- page 4)

In accordance with the Examiner's suggestion, Applicants respectfully submit the Declaration, following page 7 of this paper.

Applicants respectfully submit that Ray does not teach the equivalency of the lithium and the sodium salts, but the equivalency of magnesium, potassium and sodium salts and the premium ranking position of the calcium salt. In other words, Ray teaches away from the use of lithium salt and urges those skilled in the art to use the calcium salt. Declaration ¶ 9.

The experimental results provided in the Declaration clearly demonstrate that Li salt and Na salt are **not** equivalent, and that lithium glycerophosphate has a much greater penetrability into concrete than sodium glycerophosphate. Neither Lane nor Ray, considered either alone or in combination, teach or suggest the superior penetration ability of the lithium glycerophosphate.

For at least the foregoing reasons, Applicants submit that independent claim 1 is patentable over Lane and Ray, considered either alone or in combination. For similar reasons, independent claims 20 and 22 are also patentable over Lane and Ray.

III. DEPENDENT CLAIMS

The other claims in this application are each dependent on an independent claim discussed above, and are therefore believed patentable for at least the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

CONCLUSION


In view of the foregoing, all of the claims in this application are patentable over the prior art, and an early and favorable consideration thereof is solicited.

In the event that the Examiner disagrees with any such opinions, it is respectfully requested that the Examiner specifically indicate those portions of the respective reference providing the basis for a contrary view.

Please charge any fees incurred by reason of this response and not paid herewith to Deposit Account No. 50-0320.

Respectfully submitted,
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